IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.26881 OF 2006

Between:

Smt.Duddu Bala Tripura Sundari.

..... PETITIONER

AND

Deputy Commercial Tax Officer-II,
Samarangamchowk Circle,
Vijayawada Division, Vijayawada,
And others.

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.26881 OF 2006

O R D E R
(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> **"… Hon'ble Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the notice dt.19-9-2006 in Form No.5 under Section 27 of the Act No.II of the Revenue Recovery Act, 1864, issued by the 1st respondent for realization of the alleged tax and penalty arrears relating to the 3rd respondent from the petitioner as illegal, arbitrary and without jurisdiction and set aside the same and consequently declare that the petitioner who is a surety is not liable to pay any arrears of tax or penalty relating to 3rd respondent after 1994-95 and pass …"**

The third respondent is a registered dealer under the A.P. General Sales Tax Act (for short 'the Act') carrying on the business in rice and is an assessee on the rolls of the second respondent. For the purpose of registration as a dealer under the Act, the third respondent filed an application dated 21.10.1994 before the second respondent and as per the relevant rules under the Act, the third respondent is required to provide a third party surety. The petitioner therefore provided the necessary surety. It appears that in the course of conduct of business, the third respondent fell in arrears of tax due under the Act for the assessment year 2001-2002. Towards recovery of the said arrears of

tax and penalty, the first respondent initiated proceedings under the Revenue Recovery Act by attaching the property of the petitioner, and hence, the present writ petition is filed.

Heard the learned Government Pleader.

It is settled law by this Court in a judgment reported in NEW KAMAL BAR AND CAFÉ, HYDERABAD V/s. STATE OF ANDHRA PRADESH [42 APSTJ 77 (A.P)] that the liability of the surety provided at the time of registration of a firm under the Act is limited only for a period of one year from the date of furnishing of the surety. Since the impugned action for recovery of the arrears of tax and penalty due from the third respondent for the year other than the year for which the petitioner provided the surety, the impugned proceedings against the petitioner are clearly illegal, and therefore, the writ petition is required to be allowed and the same is accordingly allowed as prayed for at the admission stage itself.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

29TH DECEMBER, 2006
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.26881 OF 2006
(Per Sri Justice J.Chelameswar)

29TH DECEMBER, 2006